

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY R. SCHWARTZ,) CASE NO. C08-1577-MJP
Plaintiff,)
v.) ORDER AFFIRMING
MICHAEL J. ASTRUE,) COMMISSIONER
Commissioner of Social Security,)
Defendant.)

The Court has reviewed the entire record, including the Administrative Record, the memoranda of the parties, and the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler. It is therefore ORDERED:

(1) The Court adopts the Report and Recommendation.

(2) The Court finds that any error by the Administrative Law Judge (“ALJ”) regarding Plaintiff’s ability to work as a housekeeper/cleaner was harmless. This Court “will not reverse an ALJ’s decision for harmless error, which exists when it is clear from the record that the ALJ’s error was inconsequential to the ultimate nondisability determination.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008) (quotation omitted). The ALJ found Plaintiff suited for work as a small parts

01 assembler, which offers a “significant number” of jobs as required by 42 U.S.C.
02 § 423(d)(2)(A) (2006). (Dkt. No. 16 at 6-7.) Because the jobs available as a
03 housekeeper/cleaner were not necessary to the ALJ’s conclusion, any related error
04 would not justify reversal. The Court does not reach the issue of whether the ALJ
05 actually erred in this respect.

06 (3) The Court agrees with Magistrate Judge Theiler’s analysis that the residual
07 functional capacity assessment (“RFCA”) accounted for limitations due to Plaintiff’s
08 headaches. (Dkt. No. 16 at 10-11.) A reviewing court may “draw[] specific and
09 legitimate inferences from [an] ALJ’s opinion.” Magallenes v. Bowen, 881 F.2d 747,
10 755 (9th Cir. 1989). The Magistrate Judge relied on such inferences, and therefore did
11 not engage in an “improper post hoc rationalization.” (Dkt. No. 17 at 3.)

12 (4) The Court finds that the ALJ’s statement that “medication and treatment ha[ve]
13 successfully resolved [Plaintiff’s] symptoms” is consistent with the RFCA. (AR 22.)
14 The statement is most reasonably understood as saying that Plaintiff’s symptoms had
15 been resolved to the degree that they did not impose limitations beyond those included
16 in the RFCA. Plaintiff’s interpretation would render the ALJ’s decision utterly
17 incoherent. The Court declines to give it such a reading.

18 (5) The Court holds that the ALJ’s classification of malingering as a medically
19 determinable impairment, if incorrect, was harmless. The inclusion of an additional
20 impairment would favor a disability claimant, so Plaintiff suffered no prejudice
21 regardless of any error. See Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1055
22 (noting that a reviewing court may disregard nonprejudicial errors as harmless). The

01 Court also finds no indication that the precise medical categorization of malingering
02 affected the ALJ's ultimate disability determination. Any classification mistake
03 therefore does not constitute reversible error.

04 (6) The Court AFFIRMS the decision of the Commissioner.

05 (7) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

07 DATED this 17th day of July, 2009.

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12 Marsha J. Pechman
13 United States District Judge
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